CF0000058119

Cr. A. 306/95 (2)

(II-198/(Jail)
C. J. 2. R.-2000 6-88

# APPEAL OF PRISONER

No. 7855/38 Name ઝેંગ્રી સિંહ S/o ગોરેલાલ ગોંડ

Father's name ગોરેલાલ ગોંડ સાકિન આમગોવ ચોકી પચપેડી આના માકરી

Residence ~~જિલ્લો~~ વિલાસપુર Age ૩૨ વર્ષ

Sentenced આજીવન કારાવાસ on 16/12/1994

Under section ~~302, 34, 323~~ ૩૦૨, ૩૪, ૩૨૩ ~~I.P.C.~~ by પેનલ કોર્ટ સત્ર આધાર વિલાસપુર (મ.પ્ર.)

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 10/12/94

2 Date of which copy received 9/1/95

3 Date on which Appeal sent 1/95

4 whether the prisoner wishes to be represented or not – Yes / ~~No~~.

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No. 7855/38 Name ઝેંગ્રી સિંહ S/o ગોરેલાલ ગોંડ

Continued in કેન્દ્રીય Jail રાયપુર (મ.પ્ર.)

No. 63 Dated 10/1/95 1995

Forward to the ~~CHIEF JUDICIAL MAGISTRATE~~ આરોપીનું પેનલમાં ૩૨૫ આધાર અપીલ (મ.પ્ર.)

to gather which a copy of order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent

અધીક્ષક
કેન્દ્રીય જેલ, રાયપુર (મ.પ્ર.)

Date of receipt in C. J. M's office

Date of receipt record to accompany

Memo of Appeal of the Appellate court

No Dated 198

Forwarded to the

C. J. Magistrate

Date of receipt in Appellate Court 10/12/94 to 18/1/95

High Court of Madhya Pradesh
JABALPUR
Reg. No. 64
Clerk
Court Jabalpur

( P. T. O. )

XI-HC-22

(5)

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

Cri. A. No. 306/95

मामला क्रमांक ..... सन् 200

विरुद्ध .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**D.B. : HON'BLE SHRI LAL CHAND BHADOO, J. AND HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J.**

**9-12-2005**

Mr. Suryakant Mishra, counsel for the accused/appellant.
Mr. U.N.S.Deo, Additional Public Prosecutor and Mr. Ravindra Agrawal, Panel Lawyer for the respondent/State.

Heard.

**ORAL JUDGMENT**

1. This appeal has been directed against the judgment of conviction and order of sentence dated 10-12-1994 passed by Vth Additional Sessions Judge, Bilaspur in Sessions Trial No.286/1993, whereby the learned Additional Sessions Judge, after holding the accused/appellant Umendi Singh guilty for commission of the offence punishable under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life.

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XI-HC-22

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आदेश पत्रक

Cri. A. No. 306/95

मामला क्रमांक —2— सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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2. The prosecution case, in brief, is that, Shivshankar, the father of the deceased was not keeping well, therefore, in the night of 9-3-1993, at about 7.30 P.M., Shivshankar was lying on a cot. At that time, Vishnu and Vishwanath also came there. The deceased Kaushal Prasad, the son of Shivshankar was massaging the body of Shivshankar. The accused/appellant Umendi Singh came there and asked, who are sitting here, who has allowed them to sit here and why they are sitting here. Upon which, Kaushal Prasad asked the accused as to why he is talking like that, which infuriated the accused and he picked up the burning kerosene lamp, threw it on Kaushal Prasad who was wearing a polyester shirt, as a result of which, the shirt caught fire and upper part of the body of Kaushal Prasad was burnt. The Kotwar was asked to report the matter as the doctor of the village refused to give treatment to Kaushal Prasad. Therefore, Kaushal Prasad was sent to Dharam Hospital, Bilaspur. The Officer-in-Charge of the Police Outpost Pachpedi registered an F.I.R., Ex.P-3, which was lodged by the deceased Kaushal Prasad himself. The Investigating Officer

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आदेश पत्रक

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मामला क्रमांक —3— सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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came to the scene of occurrence. He took into possession the half burnt shirt of Kaushal Prasad, the kerosene lamp and the half burnt bedding under Ex.P-1. During the treatment in the Bilaspur Hospital, after 15 days, on 24-3-1993, Kaushal Prasad succumbed to the burn injuries. A Panchnama, Ex.P-5 of the dead body was prepared by the Investigating Officer and post mortem of the body was conducted by Dr.G.L.Arora, who prepared a post mortem report Ex.P-4 in which he mentioned the cause of death of Kaushal Prasad to be septicemia due to infected areas of deep burns. After completion of the investigation, a charge-sheet was filed in the Court of IInd Additional Chief Judicial Magistrate, Bilaspur, who, in turn, committed the case to the Sessions Judge, Bilaspur, wherefrom the Vth Additional Sessions Judge, Bilaspur received the case for trial.

3. The prosecution, in order to prove the charge against the accused/appellant, examined 7 witnesses. On the other hand, the statement of the accused was recorded under Section 313 of

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मामला क्रमांक —4— सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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the Code of Criminal Procedure, in which he denied the prosecution evidence and stated that he has been falsely implicated in this case and further stated that Kaushal Prasad was burnt on account of the burning lamp thrown by Vishwanath.

4. After hearing the arguments of learned counsel for both the parties, the learned Additional Sessions Judge convicted and sentenced the accused/appellant as mentioned in para 1 of this judgment.

5. We have heard learned counsel for both the parties. The fact of homicidal nature of the death of Kaushal Prasad has not been disputed by learned counsel for the accused/appellant. Apart from that, from the evidence of P.W.-1, Shivshankar and P.W.-2, Vishnu, the eye-witnesses and also the evidence of P.W.-6, Dr.G.L.Arora, who conducted the post mortem on the body of Kaushal Prasad and prepared the post mortem report, Ex.P-4, in which he has mentioned that the cause of death was septicemia

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मामला क्रमांक -5- सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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due to infected areas of deep burns, it is established that, the nature of the death of Kaushal Prasad was homicidal.

6. As far as involvement of the accused/appellant in the crime in question is concerned, the same has also not been disputed by the counsel for the accused/appellant. Shivshankar, P.W.-1, the father of the deceased, has stated in his evidence that, at the relevant time, at about 7.30 P.M., being ill he was lying on the cot and his son Kaushal Prasad, since deceased was doing massage and Vishnu was sitting there. At that time, the accused Umendi Singh came and said, who are sitting here, who has allowed them to sit here and asked that why they are sitting here. Upon which, Kaushal Prasad objected the accused Umendi Singh and said why he is talking like that, which infuriated the accused and he picked up the burning kerosene lamp, threw it on Kaushal Prasad, who was wearing a polyester shirt which caught fire, as a result of which, the upper part of the body of Kaushal Prasad i.e. the chest and the above area of the chest were burnt and he was

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मामला क्रमांक — 6 — सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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| | immediately taken to the hospital, first in the village and thereafter to the Dharam Hospital, Bilaspur, where he received treatment for about 15 days and ultimately on 24-3-1993 he succumbed to the burn injuries. This evidence has been corroborated by P.W.-2, Vishnu, who was sitting at the scene of occurrence. In the cross-examination of these two witnesses, the defence has not been able to elicit any fact which may make the evidence of these two witnesses unreliable. Even P.W.-1, Shivshankar has said that, before the incident, there was no dispute between him and the accused. The evidence of these two eye-witnesses stands further corroborated by the evidence of P.W.-6, Dr. G.L.Arora, who conducted the post mortem on the body of Kaushal Prasad and found the burn injuries. Therefore, the involvement of the accused/appellant in the crime in question is established and finding to that effect of the learned Additional Sessions Judge does not require any interference by this Court.<br><br>7. Learned counsel for the accused/appellant argued that, if the facts of the prosecution case are taken as true on the | |

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मामला क्रमांक -7- सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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face of it, the offence against the accused/appellant does not travel beyond Section 304 Part II of the Indian Penal Code as there was no intention of the accused/appellant to commit the murder of Kaushal Prasad.

8. On the other hand, learned Additional Public Prosecutor for the respondent/State supported the judgment of the trial Court.

9. In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have scrutinised the evidence of P.W.-1, Shivshankar, the father of the deceased. In his evidence, he has stated that, at the time of the crime in question, he was lying on the cot and Kaushal Prasad was massaging him, all of a sudden the accused came and said, who are sitting here, who has allowed them to sit here and why they are sitting here, which was objected by the deceased Kaushal Prasad, and in that process, the accused/appellant picked up the burning kerosene

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मामला क्रमांक —8— सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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lamp and immediately threw it on Kaushal Prasad, as a result of which, the kerosene splashed on the shirt which Kaushal Prasad was wearing and the shirt immediately caught fire. P.W.-1, Shivshankar, in the last line of para 6 of his evidence, has stated that, there was no dispute with the accused Umendi Singh before the incident. Therefore, in view of the above facts, it is not disputed that, in a sudden quarrel, the accused/appellant picked up the burning kerosene lamp, without giving second thought, threw it on Kaushal Prasad and the polyester shirt which Kaushal Prasad was wearing caught fire. Therefore, the case is covered under Exception 4 of Section 300 of the Indian Penal Code as the accused/appellant threw the burning kerosene lamp without any preplan and premeditation in a spur of moment in the heat of passion on a sudden quarrel, and from the above facts, it cannot be held that, the accused/appellant threw the burning kerosene lamp on Kaushal Prasad with intention to cause his death. However, from the above facts, it can safely be inferred that, the accused/appellant had knowledge while throwing the burning

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**मामला क्रमांक** —9— **सन्** 200

**विरुद्ध**

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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kerosene lamp on Kaushal Prasad that by such act he may likely to cause death of Kaushal Prasad.

10. Therefore, we are of the considered opinion that, the finding of the trial Court to the extent of holding the accused/appellant guilty for commission of the offence punishable under Section 302 of the Indian Penal Code cannot be sustained and same is liable to be set aside

11. In the result, the appeal is partly allowed. The conviction and sentence passed against the accused/appellant for commission of the offence punishable under Section 302 of the Indian Penal Code are set aside. Instead thereof, the accused/appellant Umendi Singh is convicted under Section 304 Part II of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 10 years. The accused/appellant is in custody since 9-3-1993, thereby he has already served the sentence. It is,

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मामला क्रमांक —10— सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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therefore, directed that, the accused/appellant be set at liberty forthwith, if not required in any other crime.

12. In the light of above order, M.(Cr.)P.No.2304/2004 for suspension of sentence and grant of bail and I.A.No.3277/2004 for urgent hearing stand disposed of.

Sd/-
L.C. Bhadoo
Judge

Sd/-
V.K.Shrivastava
Judge

G.Singh

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